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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 RICK J. HINRICHSSEN, ANNA  
11 HINRICHSSEN, HOLLY COX,

12 Plaintiffs,

13 vs.

14 QUALITY LOAN SERVICE  
15 CORPORATION; DEUTSCHE  
16 BANK NATIONAL TRUST  
17 COMPANY, AS TRUSTEE FOR  
18 THE HOLDERS OF NEW  
CENTURY HOME EQUITY LOAN  
TRUST, SERIES 2005-A, ASSET  
BACKED PASS-THROUGH  
CERTIFICATES; DOES 1-10,  
INCLUSIVE,

19 Defendants.

CASE NO. 16cv0690 DMS (NLS)

**ORDER GRANTING MOTION  
FOR LEAVE TO FILE AMENDED  
ANSWER AND COUNTERCLAIM  
AND TO ADD NEW PARTIES**

20 This case comes before the Court on Deutsche Bank's motion for leave to file an  
21 Amended Answer and Counterclaim and to add new parties. Plaintiffs filed an  
22 opposition to the motion, and Deutsche Bank filed a reply. For the reasons discussed  
23 below, the Court grants the motion.

24 **I.**

25 **BACKGROUND**

26 On April 25, 2005, Plaintiffs Rick and Anna Hinrichsen obtained a mortgage to  
27 purchase the property at 11060 Green Oaks Road, Lakeside, California. On May 3,  
28 2005, a Deed of Trust was executed on the Property naming New Century Mortgage

1 Corporation as the lender, the Hinrichsens as the borrowers and Landamerica Southland  
2 Title as Trustee.

3 On January 13, 2012, Steven Lucore and Judy Lucore, on behalf of the  
4 Hinrichsens, issued a check payable to Bank of America, N.A. in the amount of  
5 \$285,393.85 as payment in full of the Hinrichsen's mortgage. In light of that purported  
6 payment, Bank of America transferred title to the Property to the Hinrichsens.  
7 Unfortunately for the Bank, the Lucores' check did not clear. Thereafter, the Bank  
8 reversed the payment on the Hinrichsen's account, and their loan was placed in default  
9 status.

10 Nevertheless, and because they had apparently received title to the Property, the  
11 Hinrichsens proceeded to transfer title to the Property to a number of their family-  
12 related entities. First, on March 16, 2012, the Hinrichsens transferred title to the  
13 Property to the Rick and Anna Hinrichsen Property Trust by way of a Grant Deed.  
14 Next, on June 30, 2015, the Hinrichsens transferred title to the Property to Pacifico  
15 Property Trust by way of a Grant Deed. Two days later, on July 2, 2015, Plaintiff Holly  
16 Cox, the Hinrichsens' daughter, as Trustee of the Pacifico Property Trust, recorded a  
17 Deed of Trust and Assignment of Rents for the Property. That document identifies  
18 Hayven Arizona Finance as the beneficiary of the Deed of Trust. Nearly a year later,  
19 on May 6, 2016, Pacifico Property Trust transferred its interest in the Property to Ms.  
20 Cox by way of a Grant Deed. Five days later, on May 11, 2016, Ms. Cox transferred  
21 her interest in the Property to herself and her parents, as tenants in common, giving  
22 herself and her parents each a fifty percent interest in the Property.

23 Meanwhile, New Century and Quality Loan Service Corporation were also  
24 recording notices against the Property. On February 25, 2014, New Century assigned  
25 its interest in the Deed of Trust to Deutsche Bank. On November 10, 2014, Quality  
26 recorded a Notice of Default and Election to Sell the Property. On March 4, 2016,  
27 Quality recorded a Notice of Trustee's Sale of the Property, scheduling the sale for

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1 April 1, 2016. Finally, on September 2, 2016, Quality recorded against the Property a  
2 Rescission of Notice of Default and Election to Sell Under Deed of Trust.

3 While these notices were being recorded against the Property, the Hinrichsens  
4 and their daughter Ms. Cox filed the present case against Quality and Deutsche Bank.  
5 In the Complaint, Plaintiffs alleged that on September 7, 2006, the Hinrichsens  
6 “rescinded their Mortgage Loan by sending their notice in writing to New Century  
7 Mortgage Corporation (‘NCMC’) under the Truth in Lending Act (‘TILA’) 15 U.S.C.  
8 § 1635(a), effectively voiding the note and deed of trust.” (Compl. ¶ 8.) Plaintiffs also  
9 alleged they “sold” the Property to Pacifico Property Trust in June 2015, and  
10 “remain[ed] as tenants in the property under a lease option with equitable title therein.”  
11 (*Id.* ¶ 10.) According to the Complaint, Ms. Cox was “the current legal owner of the  
12 subject property.” (*Id.* ¶ 11.) The Complaint alleged claims for violation of the Fair  
13 Debt Collection Practices Act (“FDCPA”), the Rosenthal Fair Debt Collection Practices  
14 Act (“RFDCPA”), violation of California Civil Code § 2924, violation of California  
15 Business and Professions Code § 17200 and declaratory relief.

16 On May 2, 2016, Plaintiffs filed a motion for leave to amend their Complaint,  
17 which the Court granted. In the First Amended Complaint (“FAC”), Plaintiffs reallege  
18 the claims in their original Complaint. They also allege the Hinrichsens and Ms. Cox  
19 each have a fifty percent interest in the Property. (FAC ¶¶ 1-2.)

20 In response to the FAC, Defendant Quality and Deutsche Bank each filed a  
21 motion to dismiss. The Court denied Quality’s motion, and granted in part and denied  
22 in part Deutsche Bank’s motion. Specifically, the Court granted the motion to dismiss  
23 Plaintiffs’ 17200 claim, but denied the motion to dismiss Plaintiffs’ other claims.  
24 Plaintiffs opted to not amend their 17200 claim, and to proceed with their other claims  
25 as alleged in the FAC.

26 Deutsche Bank now moves for leave to file an Amended Answer and  
27 Counterclaim and to add new parties. Specifically, Deutsche Bank seeks leave to file  
28 a Counterclaim alleging two claims for fraud, a claim for unjust enrichment and a claim

1 for declaratory judgment. The proposed Counterclaim also adds Bank of America as  
 2 a Counter Claimant, and the Hinrichsen Property Trust, Pacifico Property Trust, the  
 3 Lucores and Hayven Arizona Finance as Counter Defendants.

## 4 II.

### 5 DISCUSSION

6 Deutsche Bank's motion relies on Federal Rules of Civil Procedure 15(a) and  
 7 19(a), which govern amendments to pleadings and joinder of parties, respectively.

#### 8 A. Leave to Amend

9 Rule 15 provides that leave to amend a party's pleading "shall be freely given  
 10 when justice so requires." Fed. R. Civ. P. 15(a). In accordance with this Rule, the  
 11 Supreme Court has stated,

12 in the absence of any apparent or declared reason -- such as undue delay,  
 13 bad faith or dilatory motive on the part of the movant, repeated failure to  
 14 cure deficiencies by amendments previously allowed, undue prejudice to  
 15 the opposing party by virtue of allowance of the amendment, futility of  
 amendment, *etc.* -- the leave sought should, as the rules require, be "freely  
 given."

16 *Foman v. Davis*, 371 U.S. 178, 182 (1962). Of these factors, the Ninth Circuit has  
 17 stated "it is the consideration of prejudice to the opposing party that carries the greatest  
 18 weight." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).  
 19 The party opposing the amendment bears the burden of showing prejudice. *DCD*  
 20 *Programs, Ltd. v. Leighton*, 833 F.2d 183, 186-87 (9<sup>th</sup> Cir. 1987). Absent prejudice, or  
 21 a strong showing of any of the remaining *Foman* factors, there exists a presumption  
 22 under Rule 15(a) in favor of granting leave to amend. *Eminence Capital*, 316 F.3d at  
 23 1052.

24 Here, Plaintiffs assert they will be prejudiced if Deutsche Bank is granted leave  
 25 to amend. Specifically, they contend they will suffer a grave injustice as discovery has  
 26 already commenced and their motion to strike Deutsche Bank's affirmative defenses is  
 27 pending. (Opp'n to Mot. at 7.) It is true discovery in this case has already commenced.  
 28 However, there is ample time remaining for the parties to conduct more discovery. The

fact discovery cut-off is April 28, 2017, and the expert discovery cut-off is June 9, 2017. That discovery has commenced does not demonstrate Plaintiffs would be prejudiced if Deutsche Bank is granted leave to amend. Furthermore, there is no prejudice to Plaintiffs by virtue of their pending motion to strike Deutsche Bank's affirmative defenses. Although that motion would become moot if leave to amend is granted, Plaintiffs could renew the motion if they chose to do so. Thus, Plaintiffs have not shown they would be prejudiced by Deutsche Bank's proposed amendment.

Plaintiffs' only other argument in response to Deutsche Bank's request for leave to amend is that the proposed amendment would be futile because the counterclaims are time-barred.<sup>1</sup> However, whether the proposed counterclaims are time-barred will depend on a number of facts, none of which are presently before the Court, such as when Deutsche Bank and Bank of America discovered the alleged fraud and what they did after that discovery. On the present record, Plaintiffs have not shown the proposed counterclaims are untimely, and thus, the proposed amendment is not futile.

Turning to the other *Foman* factors, there is no evidence that Deutsche Bank unduly delayed filing the present motion, or that the motion is brought in bad faith or with a dilatory motive. Furthermore, this is Deutsche Bank's first request for leave to amend, and it was filed by the deadline set out in the Court's Scheduling Order.

Considering the factors discussed above, Plaintiffs have not overcome the presumption in favor of granting leave to amend. Therefore, that request is granted. The Court turns now to whether the proposed amendment satisfies the joinder rules.

## **B. Joinder**

"Federal Rule of Civil Procedure 19 governs compulsory party joinder in federal district courts." *E.E.O.C. v. Peabody Western Coal Co.*, 610 F.3d 1070, 1077 (9<sup>th</sup> Cir. 2010). Rules 19(a)(1) and (2) state:

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<sup>1</sup> Plaintiffs also assert the proposed counterclaims are irrelevant to this case. Relevance, however, is not a factor in determining whether to grant leave to amend. Even if it was, the Court disagrees with Plaintiffs' assertion that the proposed counterclaims are not relevant to this case.

1 (1) **Required Party.** A person who is subject to service of process and  
 2 whose joinder will not deprive the court of jurisdiction over the subject  
 matter of the action shall be joined as a party in the action if

3 (A) in the person's absence the court cannot accord complete relief among  
 4 existing parties; or

5 (B) that person claims an interest relating to the subject of the action and  
 is so situated that disposing of the action in the person's absence may:

6 (i) as a practical matter impair or impede the persons' ability to  
 7 protect the interest; or

8 (ii) leave an existing party subject to a substantial risk of incurring  
 9 double, multiple, or otherwise inconsistent obligations because of  
 the interest.

10 (2) **Joinder by Court Order.** If a person has not been joined as required,  
 the court must order that the person be made a party. A person who  
 11 refuses to join as a plaintiff may be made either a defendant or, in a proper  
 case, an involuntary plaintiff."

12 Fed. R. Civ. P. 19(a)(1)-(2). This Rule "is concerned with consummate rather than  
 13 partial or hollow relief as to those already parties, and with precluding multiple lawsuits  
 14 on the same cause of action." *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d  
 15 1030, 1043 (9<sup>th</sup> Cir. 1983).

16 "A Rule 19 motion poses 'three successive inquiries.'" *Peabody*, 610 F.3d at  
 17 1078 (quoting *E.E.O.C. v. Peabody Western Coal Co.*, 400 F.3d 774, 779 (9<sup>th</sup> Cir. 2005)  
 18 ("*Peabody II*"). "First, the court must determine whether a nonparty should be joined  
 19 under Rule 19(a)." *Id.* (quoting *Peabody II*, 400 F.3d at 779). "If an absentee meets  
 20 the requirements of Rule 19(a), 'the second stage is for the court to determine whether  
 21 it is feasible to order that the absentee be joined.'" *Id.* (quoting *Peabody II*, 400 F.3d  
 22 at 779). If joinder is not feasible, the third stage asks "'whether the case can proceed  
 23 without the absentee' or whether the action must be dismissed." *Id.* (quoting *Peabody*  
 24 *II*, 400 F.3d at 779).

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1 Here, Deutsche Bank seeks to join the Lucores, the Hinrichsen Property Trust,  
2 Pacifico Property Trust and Hayven Arizona Finance as Counter Defendants.<sup>2</sup> Each of  
3 these individuals and entities was involved in either the alleged fraudulent scheme to  
4 obtain title to the Property or the transfers of the property thereafter, and each of them  
5 has an interest in the outcome of this case. Thus, these parties should be joined under  
6 Rule 19(a).

7 Turning to the second inquiry, there is no reason why joinder of these parties is  
8 not feasible. Venue over the proposed counterclaims is proper, *see* 28 U.S.C. §  
9 1391(b), and Plaintiffs have not shown that any of the proposed Counter Defendants  
10 would not be subject to personal jurisdiction in this Court. On the issue of subject  
11 matter jurisdiction, Plaintiffs argue the Court must have original jurisdiction over the  
12 counterclaims. However, that is incorrect. Pursuant to 28 U.S.C. § 1367(a),

13 in any civil action of which the district courts have original jurisdiction,  
14 the district courts shall have supplemental jurisdiction over all other  
15 claims that are so related to claims in the action within such original  
jurisdiction that they form part of the same case or controversy under  
Article III of the United States Constitution.

16 28 U.S.C. § 1367(a). Here, the Court has original jurisdiction over Plaintiffs'  
17 Complaint pursuant to 28 U.S.C. § 1331 (federal question), and may exercise  
18 supplemental jurisdiction over the counterclaims because they are related to the claims  
19 alleged in the FAC. Thus, joinder of the additional parties named in the proposed  
20 Counterclaim is feasible.

21 With that finding, the Court need not continue to the third inquiry. Rather, the  
22 Court finds joinder of these additional parties is proper, and grants Deutsche Bank's  
23 request to do so.

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28 <sup>2</sup> Deutsche Bank also seeks to join Bank of America as a Counter Claimant. In  
light of the Court's ruling on Bank of America's motion to intervene, the Court will not  
address whether joinder of Bank of America is proper under Rule 19.

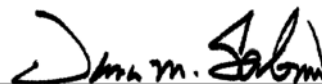
1 **III.**

2 **CONCLUSION**

3 For the reasons set out above, the Court grants Deutsche Bank's motion for leave  
4 to file an Amended Answer and Counterclaim and to add new parties. Deutsche Bank  
5 shall file this pleading on or before January 13, 2017. In light of this ruling, Plaintiffs'  
6 motion to strike Deutsche Bank's affirmative defenses is denied as moot.

7 **IT IS SO ORDERED.**

8 DATED: January 5, 2017

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10 HON. DANA M. SABRAW  
11 United States District Judge  
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